

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT JOHN STOCKTON, JR.,) No. C 13-3978 RMW (PR)
Petitioner,) ORDER TO SHOW CAUSE
vs.)
GREG D. LEWIS, Warden,)
Respondent.)

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee. The court orders respondent to show cause why a writ of habeas corpus should not be granted.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petitioner's Claims

In his petition, petitioner alleges that, in 2011, he appeared before the Institutional Classification Committee (“ICC”) for a periodic review of petitioner’s segregation status in the SHU after being validated as a gang member in 2009. As grounds for federal habeas relief, petitioner claims that: (1) he did not receive due process at the ICC hearing, and (2) his detention in the SHU, and specifically, his being labeled as “active” in gang activity was not supported by “some evidence”. Liberally construed, the court orders respondent to show cause why the petition should not be granted.

CONCLUSION

1. The clerk shall serve by mail a copy of this order and the petition (docket no. 1) and all attachments thereto upon the respondent and the respondent's attorney, the Attorney General of the State of California. The clerk shall also serve a copy of this order on the petitioner.

2. Respondent shall file with the court and serve on petitioner, within **sixty days** of the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the underlying state criminal record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within **thirty days** of the date the answer is filed.

3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases within **sixty days** of the date this order is filed. If respondent files such a motion, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within **twenty-eight days** of the date the motion is filed, and respondent **shall** file with the court and serve on petitioner a reply within **fourteen days** of the date any opposition is filed.

1 4. It is petitioner's responsibility to prosecute this case. Petitioner is reminded that
2 all communications with the court must be served on respondent by mailing a true copy of the
3 document to respondent's counsel. Petitioner must keep the court and all parties informed of any
4 change of address by filing a separate paper captioned "Notice of Change of Address." He must
5 comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal
6 of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

7 IT IS SO ORDERED.

8 DATED: GEF BFI


RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROBERT JOHN STOCKTON JR,

Case Number: CV13-03978 RMW

Plaintiff,

CERTIFICATE OF SERVICE

v.

GREG D LEWIS et al,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 18, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert John Stockton J-80992
C11-102, Security Housing Unit
Pelican Bay State Prison, SHU
P.O. Box 7500
Crescent City, CA 95532

Dated: February 18, 2014

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk